

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda ID 12696
RESOLUTION E-4636
February 27, 2014**

**REDACTED
RESOLUTION**

Resolution E-4636. Pacific Gas and Electric Company requests approval of an agreement for the procurement of renewable energy credits with TransAlta Corporation.

PROPOSED OUTCOME: This Resolution denies cost recovery for Pacific Gas and Electric Company's agreement for renewable energy credits with TransAlta Corporation.

SAFETY CONSIDERATIONS: This Resolution denies cost recovery for an agreement for the purchase of RECs from an out-of-state wind facility and thus is not expected to have any impact on public safety.

ESTIMATED COST: None.

By Advice Letter (AL) 3862-E filed on June 16, 2011 (as supplemented by AL 3862-E-A filed on October 12, 2012, AL 3862-E-B filed on January 30, 2013, and AL 3862-E-C filed on October 17, 2013).

SUMMARY

Pacific Gas and Electric Company's (PG&E) request for approval of its agreement for the purchase of renewable energy credits (RECs) from Transalta Corporation is denied.

Pursuant to its obligations under California's renewables portfolio standard (RPS) at the time this REC Agreement was executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by December 31, 2010, subject to various compliance rules. In an effort to meet this compliance obligation, PG&E executed the following REC Agreement in 2010.

PG&E filed Advice Letter AL 3862-E on June 16, 2011 requesting Commission approval to purchase RECs from TransAlta Corporation (TransAlta). Under the contract, PG&E would receive RECs from TransAlta's newly developed 66 megawatt (MW) Summerview #2 wind facility located in Alberta, Canada. PG&E executed this agreement with TransAlta through bilateral negotiations. The original agreement would have obligated TransAlta to transfer the RECs associated with 175-210 megawatt-hours (MWh) per year of renewable generation (175,000 to 210,000 RECs¹) to PG&E from 2011 through 2014.

PG&E filed supplemental AL 3862-E-A on October 12, 2012 to remove the RECs associated with generation in 2011 from the REC Agreement so that TransAlta would have the option to sell these RECs to another party.

PG&E filed supplemental AL 3862-E-B on January 30, 2013 to remove the RECs associated with generation in 2012 from the REC Agreement so that TransAlta would have the option to sell these RECs to another party.

PG&E filed supplemental AL 3862-E-C on October 17, 2013 to remove the RECs associated with generation in 2013 from the REC Agreement so that TransAlta would have the option to sell these RECs to another party.

This resolution denies cost recovery for the REC Agreement with TransAlta because the cost of the RECs associated with generation in 2014 compares unfavorably to other comparable REC transactions executed by PG&E around the same time that it executed its original agreement with TransAlta.

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS Program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036 and SB 2 (1X).² The RPS program is codified in Public Utilities Code Sections 399.11-399.31.³ Under SB 2 (1X), the

¹ One REC represents the renewable attributes associated with one MWh of eligible renewable generation.

² SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

³ All further references to sections refer to Public Utilities Code unless otherwise specified.

RPS program administered by the Commission requires each retail seller to increase its total procurement of eligible renewable energy resources so that 33 percent of retail sales are served by eligible renewable energy resources no later than December 31, 2020.

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of Advice Letters 3862-E, 3862-E-A, 3862-E-B, and 3862-E-C was made by publication in the Commission's Daily Calendar. Pacific Gas and Electric Company states that a copy of each Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

No protests were filed to PG&E's AL 3862-E/E-A/E-B/E-C.

DISCUSSION

Pacific Gas and Electric Company's (PG&E) request for approval of its agreement for the purchase of renewable energy credits (RECs) from TransAlta Corporation is denied.

Pursuant to its obligations under California's renewables portfolio standard (RPS) at the time this REC Agreement was executed, PG&E was required to procure 20% of its retail sales from eligible renewable resources by December 31, 2010, subject to various compliance rules. In an effort to meet this compliance obligation, PG&E executed the following REC Agreement in 2010.

PG&E filed Advice Letter AL 3862-E on June 16, 2011 requesting Commission approval to purchase RECs from TransAlta. Under the contract, PG&E would receive RECs from TransAlta's newly developed 66 MW Summerview #2 wind facility located in Alberta, Canada. PG&E executed this agreement with TransAlta through bilateral negotiations. The original agreement would have obligated TransAlta to transfer the RECs associated with 175-210 MWh per year of renewable generation (175,000 to 210,000 RECs) to PG&E from 2011 through 2014.

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PG&E filed supplemental AL 3862-E-C on October 17, 2013 to remove the RECs associated with generation in 2013 from the REC Agreement so that TransAlta would have the option to sell these RECs to another party.

This resolution denies cost recovery for the REC Agreement with TransAlta because the cost of these RECs associated with generation in 2014 compares unfavorably to other comparable REC transactions executed by PG&E around the same time that it executed its original agreement with TransAlta.

Table 1 below summarizes the features of this agreement:

Table 1. Summary of PG&E's REC Agreement with TransAlta

Counter-Party	Generating Facilities	Resource Type	Total REC Procurement	Contract Term ⁴	Expected Compliance Period ⁵	Project Location
TransAlta Corporation	Summerview #2	Wind	175,000-210,000	2014	CP2	Alberta, Canada

PG&E requested that the Commission issue a resolution for Advice Letter 3862-E, as modified, that contains the following findings:

1. Approves the Purchase and Sale Agreement, as amended by the First Amendment (collectively the "PSA"), in its entirety, including payments to

⁴ This represents the term of years during which the renewable generation with which these RECs are associated would be generated pursuant to each agreement.

⁵ D.11-12-020 established three multi-year compliance periods (CP) as directed by SB 2 (1X) (CP1: 2011-13, CP2: 2014-16, CP3: 2017-20).

be made by PG&E pursuant to the PSA, subject to the Commission's review of PG&E's administration of the PSA.

2. Finds that any procurement pursuant to the PSA is procurement from an eligible renewable energy resource for purposes of determining PG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.) ("RPS") Decision ("D.") 03-06-071 and D.06-10-050, or other applicable law.
3. Finds that pursuant to Public Utilities Code Section 399.16(d), as enacted by the California Renewable Energy Resources Act, Senate Bill 2 (1X) the PSA shall count in full towards RPS procurement requirements, and thus is not subject to procurement or compliance limitations and restrictions, including those set forth in or developed pursuant to Sections 399.13 or 399.16(c), as enacted by SB 2 (1X).
4. Finds that all procurement and administrative costs, as provided by Public Utilities Code section 399.14(g), associated with the PSA shall be recovered in rates.
5. Adopts the following finding of fact and conclusion of law in support of CPUC Approval:
 - a. The PSA is consistent with PG&E's 2011 RPS procurement plan.
 - b. The terms of the PSA, including the price of delivered TRECs, are reasonable.
6. Adopts the following finding of fact and conclusion of law in support of cost recovery for the PSA:
 - a. The utility's costs under the PSA shall be recovered through PG&E's Energy Resource Recovery Account.
 - b. Any stranded costs that may arise from the PSA are subject to the provisions of D.04-12-048 that authorize recovery of stranded renewables procurement costs over the life of the contract. The implementation of the D.04-12-048 stranded cost recovery mechanism is addressed in D.08-09-012.

7. Adopts the following findings with respect to resource compliance with the Emissions Performance Standard (“EPS”) adopted in R.06-04-009:
 - a. The PSA is not covered procurement subject to the EPS because it does not involve procurement of electric energy.
8. Finds that pursuant to SB 2 (1X) and D.11-12-052, PG&E is not required to demonstrate that the RECs associated with the Project are delivered to California with imported energy for the purposes of determining RPS eligibility.

Energy Division Evaluated the REC Agreement on the Following Grounds:

- Price Reasonableness
- Procurement Review Group (PRG) Participation
- Independent Evaluator (IE) Review

Price Reasonableness

The TransAlta REC Agreement was negotiated as a bilateral contract. The agreement was executed in 2010 before the Commission had adopted rules for the utilization of RECs for RPS compliance purposes. Additionally, the TransAlta RECs are unique in that PG&E has made a preliminary showing that the RECs associated with the 2014 energy deliveries from the Summerview #2 wind facility may be counted for RPS compliance without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c).

The Commission recently approved comparable Amended REC Agreements between PG&E and Sierra Pacific Industries⁶ (SPI) and Barclays Bank, PLC⁷

⁶ Resolution E-4560 (January 10, 2013) approved cost recovery for the purchase of RECs by PG&E from SPI. That resolution is available online:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M043/K961/43961391.PDF>

⁷ Resolution E-4617 (November 14, 2013) approved cost recovery for the purchase of RECs by PG&E from Barclays. That resolution is available online:

<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M081/K692/81692796.PDF>

(Barclays) against which the TransAlta RECs should be compared. The RECs approved in the Amended SPI and Barclays Agreements were also unique because PG&E made a preliminary showing that those RECs could also be counted for RPS compliance without regard to the quantitative requirements for the use of each portfolio content category established by Pub. Util. Code § 399.16(c). As such, it is appropriate to compare the price of the TransAlta REC Agreement with the price of the Amended SPI and Barclays REC Agreements.

The price of the TransAlta REC Agreement is unreasonable when compared against the Amended SPI and Barclays REC Agreements. The price of the TransAlta REC Agreement is several times higher than the price of the Amended REC Agreements acquired by PG&E from SPI and Barclays, as recently approved by the Commission.

In conclusion, the Commission finds that the price of the TransAlta REC Agreement for the procurement of RECs associated with energy generation in 2014, as filed in Advice Letter 3862-E/E-A/E-B/E-C, is unreasonable.

See Confidential Appendix A for a more detailed discussion of the price reasonableness of the TransAlta Agreement.

Procurement Review Group (PRG) Participation

The Procurement Review Group (PRG) process was initially established in D.02-08-071 as an advisory group to review and assess the details of the IOUs' overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as an interim mechanism for procurement review.

According to PG&E, the TransAlta Agreement was discussed at its PRG meetings on August 14, 2009, October 21, 2009, May 17, 2011, May 17, 2013, and July 18, 2013. At the time, the Procurement Review Group (PRG) for PG&E included the Commission's Energy Division and Office of Ratepayer Advocates (ORA), The Utility Reform Network (TURN), the California Utility Employees (CUE), and Jan Reid, as a PG&E ratepayer.

Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the TransAlta REC Agreement for the procurement of RECs associated with energy generation in 2014, as filed in Advice Letter 3862-E/E-A/E-B/E-C, and PG&E has complied with the Commission's rules for involving the PRG.

Independent Evaluator (IE) Review

The IE for the TransAlta REC Agreement was Sedway Consulting. The IE evaluated the TransAlta REC Agreement at the time that it was negotiated and executed by PG&E in 2010 and concluded that the agreement compared favorably to alternative RPS options in the main evaluation categories of price, portfolio fit, viability, and market valuation.

Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with TransAlta and recommended the TransAlta Agreement for approval at the time that PG&E originally filed the advice letter for Commission approval.

Confidential Information

The Commission, in implementing Pub. Util. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on January 8, 2014 and comments were received from PG&E on January 28, 2014.

The Commission carefully considered comments which focused on factual, legal, or technical errors and made appropriate changes to the draft resolution.

PG&E recommends that the Commission withdraw the Resolution and approve the Advice Letter without modifications.

PG&E asserts that the Transalta REC Agreement price is reasonable when compared against the Original SPI and Barclays REC Agreements that were executed around the same time as the Transalta REC Agreement. PG&E believes the Commission should limit its price reasonableness review to competing offers available at the time that the Transalta REC agreement was executed.

As stated above, this resolution denies cost recovery and rejects the Transalta REC agreement because its price is unreasonable. PG&E submitted the Original Barclays REC Agreements⁸, SPI REC Agreement⁹, and Transalta REC Agreement for Commission approval between 2010 and 2012. Barclays and SPI re-negotiated and amended their original REC agreements with PG&E to a significantly lower price and the amended REC agreements were approved by the Commission.¹⁰ The significantly lower prices of the Amended SPI and Transalta REC Agreements were found to be reasonable by the Commission.

Transalta chose not to re-negotiate the price of their original REC Agreement with PG&E after they were given the opportunity to do so. PG&E provides no compelling rationale for why the Transalta REC Agreement should be treated differently than the SPI and Barclays REC Agreements, which were amended to significantly lower prices. PG&E's assertion that the Original SPI and Barclays REC Agreements should be used as cohorts for a comparison of price reasonableness is unreasonable. The Transalta REC Agreement's price is not competitive when compared against the appropriate cohorts, the Amended SPI

⁸ See PG&E ALs 3600-E and 3632-E

⁹ See PG&E AL3854-E

¹⁰ The Amended Barclays and SPI REC Agreements were approved by the Commission in Resolution E-4617 and E-4560, respectively.

and Barclays REC Agreements. Therefore, there is no rationale for the Commission to support approving the TransAlta REC Agreement at a significantly higher price than its appropriate cohorts.

FINDINGS AND CONCLUSIONS

1. Senate Bill 2 (1X) (Simitian, 2011) imposed significant changes on the Renewables Portfolio Standard Program, including setting new Renewables Portfolio Standard compliance targets through 2020 and beyond.
2. The price of the TransAlta Renewable Energy Credit Agreement for the procurement of Renewable Energy Credits associated with energy generation in 2014, as filed in Advice Letter 3862-E/E-A/E-B/E-C, is unreasonable.
3. Pursuant to D.02-08-071, PG&E's Procurement Review Group participated in the review of the TransAlta Renewable Energy Credit Agreement for the procurement of Renewable Energy Credits associated with energy generation in 2014, as filed in Advice Letter 3862-E/E-A/E-B/E-C, and PG&E has complied with the Commission's rules for involving the Procurement Review Group.
4. Consistent with D.06-05-039 and D.09-06-050, an independent evaluator oversaw PG&E's negotiations with TransAlta and recommended the TransAlta Agreement for approval at the time that PG&E originally filed the advice letter for Commission approval.
5. The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.
6. The TransAlta Renewable Energy Credit Agreement considered herein was pending approval before the Commission during the time that policies were being developed to address the use of Renewable Energy Credits for Renewables Portfolio Standard compliance purposes and during the time that Senate Bill 2 (1X) (Simitian, 2011) was signed into law.
7. Advice Letter 3862-E, as modified by Advice Letters 3862-E-A, 3862-E-B and 3862-E-C, requesting approval of the procurement of Renewable Energy Credits from TransAlta associated with 2014 energy generation should be denied.

February 27, 2014

THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's purchase and sale agreement with TransAlta Corporation filed in Advice Letter 3862-E, and modified by Advice Letters 3862-E-A, 3862-E-B, and 3862-E-C, is denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on February 27, 2014; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Confidential Appendix A

Price Reasonableness of the TransAlta REC Agreement

[REDACTED]

Confidential Appendix B

Summary of TransAlta REC Agreement Terms and Conditions

[REDACTED]